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No. 99-751

In the Supreme Court of the United States

BIG RIVER MINERALS CORPORATION, *et al.*,
Petitioners

v.

MICHAEL H. HOLLAND, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS UMWA 1992 BENEFIT PLAN AND ITS TRUSTEES

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QUESTIONS PRESENTED

1. Whether the courts below correctly ruled that the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, does not exclude from statutory health coverage certain pensioners who retired from the coal industry before September 30, 1994, as a result of permanent and total disabilities that they sustained in mine accidents while in petitioners' employ.

2. Whether the courts below correctly ruled that petitioners Pea Ridge Iron Ore Company and Oxide Services Corporation waived any argument that the Coal Act is unconstitutional as applied to them.

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BRIEF IN OPPOSITION FOR RESPONDENTS UMWA 1992 BENEFIT PLAN AND ITS TRUSTEES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 181 F.3d 597 (4th Cir. 1999). The opinions of the district court (Pet. Supp. App. 29a - 84a) are unreported.

STATUTE INVOLVED

This case concerns the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.* and 30 U.S.C. § 1232(h) (the "Coal Act"), which was enacted as Title XIX, Subtitle C, of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036-56.

STATEMENT OF THE CASE

I. INTRODUCTION

The court of appeals in this case determined that, in enacting the Coal Act, Congress did not exclude disability pensioners from coverage simply because they were not required to attain a specific age or minimum number of years of service in order to qualify for a pension. The decision is entirely consistent with the decisions of both other courts of appeals that have addressed the question. *See Penn Allegh Coal Co. v. Holland,* 183 F.3d 860, 864 (D.C. Cir. 1999); *Pennsylvania Mines Corp. v. Holland,* 1999 U.S. App. LEXIS 30356, *17 (3d Cir. Nov. 22, 1999). As in *Penn Allegh* and *Pennsylvania Mines*, the court of appeals construed statutory language in Sections 9711(b)(1) and 9712(b)(2) of the Coal Act that referred to the requirement that beneficiaries meet "age and service" requirements as of February 1, 1993. Petitioners admit (Pet. 5 n.2) that the decision below is consistent with that of the D.C. Circuit in *Penn Allegh*; the petition was filed before the Third Circuit decided *Pennsylvania Mines*. Notwithstanding the lack of any disagreement among the courts of appeals, petitioners contend that the decision below "conflicts with Fourth Circuit and Supreme Court decisions holding that a statute cannot be construed in a manner that renders language redundant or superfluous." Pet. 3. As the court of appeals held, however, the language at issue is ambiguous, and the interpretation advanced by the Trustees of the UMWA 1992 Benefit Plan ("1992 Plan") does not render any statutory language "redundant" or "superfluous."

Petitioners fare no better with respect to their proposed constitutional challenge to application of the Coal Act to petitioners Pea Ridge Iron Ore Company ("Pea Ridge") and

Oxide Services ("Oxide"). As the court of appeals held, that argument was waived when petitioners failed to raise it in a timely manner. Even if the constitutional challenge had been preserved, it is without merit. Contrary to petitioners' assertions, this case is readily distinguishable from *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998). The *Eastern* decision involved a different health plan, a completely separate provision of the Coal Act, and did not address "related person" liability. Unlike Eastern Enterprises, the signatory operators to which Pea Ridge and Oxide are related signed NBCWAs as recently as 1988. *Eastern* simply does not apply to the circumstances in this case.

II. BACKGROUND

A. History and Structure Of The Coal Act

Petitioners' liability arises under Sections 9711 and 9712 of the Coal Act. The Coal Act fundamentally changed the system under which certain retired coal miners and their dependents receive health benefits. The several opinions in *Eastern, supra,* addressed at some length the historical

background of the statute.[1] We summarize only those aspects of that background that are relevant here.

1. *History Of The Coal Act*

Since 1946, retiree health benefits for covered miners have been provided through a series of multiemployer health plans established and maintained pursuant to successive collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). From 1950 through 1974, health benefits (and pension benefits as well) were provided through a single multiemployer plan known as the UMWA 1950 Welfare and Retirement Fund ("1950 W&R Fund"). Following the enactment of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, the collective bargaining parties, the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association, Inc. ("BCOA"), entered into the 1974 NBCWA.

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[1]Numerous court of appeals decisions, both before and after *Eastern*, have addressed the same history. *See, e.g., Unity Real Estate Co. v. Hudson*, 178 F.3d 649 (3d Cir.), *cert. denied*, ___ U.S. ___, 120 S. Ct. 396 (1999); *Anker Energy Corp. v. Consolidation Coal Co.*, 177 F.3d 161 (3d Cir.), *cert. denied*, ___ U.S. ___, 120 S. Ct. 496 (1999); *Association of Bituminous Contractors, Inc. v. Apfel*, 156 F.3d 1246 (D.C. Cir. 1998); *Holland v. Keenan Trucking Co.*, 102 F.3d 786 (4th Cir. 1996); *Davon Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 519 U.S. 808 (1996); *In re Blue Diamond Coal, Co. (Blue Diamond Coal Co. v. Shalala)*, 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997); *In re Chateaugay Corp. (LTV Steel Co. v. Shalala)*, 53 F.3d 478 (2d Cir.), *cert. denied*, 516 U.S. 913 (1995).

In this agreement, the UMWA and BCOA divided the 1950 W&R Fund into four separate plans. Two of the new plans, the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan, provided health benefits, and the other two provided pension benefits. *See Eastern,* 524 U.S. at 509 (plurality). *See also* Pet. App. 5a.

Not long after the creation of the UMWA 1950 and 1974 Benefit Plans, severe demographic and economic changes began to have an adverse effect on the multiemployer plans. As health care costs increased, more and more coal operators exited the coal industry and "dumped" their retirees into the UMWA Plans, where their benefits would be funded by the remaining signatory operators. As the number of coal operators contributing to the UMWA Plans decreased, fewer and fewer operators were left to carry the burden of rapidly rising health care costs, not only for their own retirees but also for thousands of "orphan" retirees with whom none of the remaining contributing operators had ever had any employment relationship. *Eastern*, 524 U.S. at 511 (plurality). As a result, "[b]y the late 1980s, the UMWA Plans were facing insolvency," and, as in the past, "the issue of continued, stable funding for retiree benefits contributed to protracted labor unrest." *Keenan,* 102 F.3d at 738. *See also* 136 Cong. Rec. S12312 (daily ed. Oct. 2, 1989) (statement of Sen. Rockefeller) (labor disputes and unrest threatened the economies of several coal producing states).

In 1989, the UMWA engaged in a well-known ten-month labor dispute against the Pittston Coal Company, which was only resolved after Secretary of Labor Dole intervened and appointed a mediator. One of the terms incorporated in the settlement provided for the creation of the Secretary of Labor's Advisory Commission on United Mine Workers of America

Retiree Health Benefits (the "Coal Commission"), an industry-wide commission charged with the task of analyzing the retiree health care crisis and recommending solutions. Pet. App. 6a. *See also Eastern,* 524 U.S. at 511 (plurality).

The November 5, 1990 Coal Commission report explained that the collective bargaining process – limited as it was to companies still mining coal – was inadequate to provide a long-term solution and that legislation would be necessary to solve the crisis. The Coal Commission concluded that retired miners had legitimate expectations of receiving lifetime health benefits and that a statutory funding obligation should be imposed on current and former signatories to NBCWAs. The Commission also concluded that the legislation should include mechanisms to prevent future dumping of retiree health obligations. *See* Pet. App. 6a; *Davon, supra,* 75 F.3d at 1118. After two years of deliberations, Congress enacted the Coal Act.

2. Structure of the Coal Act

In the Coal Act, Congress provided that eligible beneficiaries under the statute would receive health coverage either from one of two new trust funds to be created in accordance with the statute or from their former employers' individual employer plans. The Coal Act mandates the continuation of individual employer plans ("IEPs") maintained by NBCWA signatories that were contractually obligated to maintain such plans as of February 1, 1993. 26 U.S.C. § 9711. These plans provided health coverage for retirees who left covered service on or after January 1, 1976, and their survivors and dependents.

This case concerns petitioners' obligation to provide benefits to their retirees directly through an IEP pursuant to

Section 9711, as well as their obligations to pay premiums to the 1992 Plan, one of two newly created funds.[2] *See* 26 U.S.C. § 9712(d)(2)(A), (B). The 1992 Plan was established "to provide health benefits to retirees who were eligible but not yet covered under previous UMWA benefit plans, and who were not receiving benefits directly from their former employers." *Keenan*, 102 F.3d at 739. *See also* Pet. App. 7a. For each beneficiary of the 1992 Plan, the last NBCWA signatory coal operator to employ the retiree in question is responsible for paying a monthly per beneficiary premium sufficient to provide health benefits for that beneficiary. 26 U.S.C. § 9712(d)(1)(B), (d)(3).[3]

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[2]The Coal Act also created the UMWA Combined Benefit Fund ("Combined Fund"). Under the statute, the UMWA 1950 and 1974 Benefit Plans were merged into the Combined Fund as of February 1, 1993. 26 U.S.C. § 9702. The Combined Fund provides health and death benefits to coal industry retirees and their dependents who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the UMWA 1950 or 1974 Benefit Plans. *Id.* at § 9703(a), (b)(1), (e), (f).

[3]In addition, each 1988 Last Signatory Operator is required to pay annual prefunding premiums to the 1992 Benefit Plan. This premium is incurred on an annual basis, and is payable for each of the operator's beneficiaries who is either receiving benefits from the 1992 Plan, or potentially eligible to receive such benefits in the future because he or she is receiving benefits from the employer's individual employer plan pursuant to 26 U.S.C. § 9711. 26 U.S.C. § 9712(d)(1)(A). Finally, 1988 Last Signatory Operators are required to provide security in favor of the 1992 Plan to ensure funding of benefits in the event

In addition, the "related persons" of any such Last Signatory Operator are jointly and severally liable for that operator's financial obligations to the 1992 Plan. 26 U.S.C. § 9712(d)(4).[4] Related persons are also jointly and severally liable for the obligation to provide health care directly to the beneficiaries through an IEP. 26 U.S.C. § 9711(c). This liability attaches jointly and severally to a Last Signatory Operator's related persons even if those entities themselves did not employ any 1992 Plan beneficiaries and even if those entities did not engage in any coal mining.

B. Petitioners' Obligations Under The Coal Act

The Trustees of the 1992 Plan brought this action in the United States District Court for the Southern District of West Virginia to compel petitioners to provide health coverage to eleven retired coal miners and their eligible dependents in accordance with the Coal Act. Pet. App. 10a. Petitioners Birchfield Mining, Inc. ("Birchfield"), Davidson Mining, Inc. ("Davidson"), and M.A.E.-West, Inc. ("M.A.E.-West") were signatory to the 1988 NBCWA. All eleven of the miners

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the operator defaults on its obligations. 26 U.S.C. § 9712(d)(2)(C).

[4]The term "related person" is defined in 26 U.S.C. § 9701(c)(2). It includes: 1) a member of a controlled group of corporations that includes the signatory operator as of July 20, 1992; 2) a trade or business under common control with the signatory company as of July 20, 1992; or 3) a person that has a partnership interest or joint venture with a signatory company in a business within the coal industry as of July 20, 1992. 26 U.S.C. § 9701(c)(2).

became totally and permanently disabled as the result of mine accidents in the course of their employment for Birchfield, Davidson, or M.A.E.-West. All had worked for petitioners prior to February 1, 1993. None of the retirees was receiving health benefits from either the former collectively bargained UMWA plans or from their former employer's IEP on February 1, 1993. It is undisputed that, absent passage of the Coal Act, all eleven of the miners would have been eligible for health care from the former UMWA 1950 and 1974 Benefit Plans.

As signatories to the 1988 NBCWA, the collective bargaining agreement in effect when the retirees in question last worked, Birchfield, Davidson, and M.A.E.-West are "1988 Last Signatory Operators" as defined in the Coal Act. 26 U.S.C. §§ 9701(c)(4), 9712(d)(6). There is no dispute that the other nine petitioners are "related persons" to Birchfield, Davidson, and M.A.E.-West as defined in the Coal Act. Petitioners nevertheless refused to provide retiree health care to these retirees under their own IEP, as required by Section 9711 of the Coal Act, 26 U.S.C. § 9711.[5] Because petitioners were not providing the required health coverage, the 1992 Plan enrolled the eleven retirees and their eligible dependents. The 1992 Plan then filed this action, seeking (i) the payment of premiums owed to the 1992 Plan pursuant to Section 9712 of the Coal Act, 26 U.S.C. § 9712 as a result of the Plan's enrolling the beneficiaries and providing their health care; and (ii) an order requiring petitioners to provide future health benefits through an IEP to the eleven disabled retirees and their dependents.

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[5]After the court of appeals issued its decision in this case, petitioners enrolled the eleven retirees and their eligible dependents in their IEP, pending the outcome of the instant petition.

Petitioners made the same arguments to the district court and the court of appeals that they now make here. They asserted that Sections 9711(b)(1) and 9712(b)(2) of the Coal Act preclude coverage for these disabled pensioners because their eligibility for their pensions is derived from their total and permanent disability from work-related accidents, rather than from their attainment of a certain age and a certain number of years of service. The Trustees of the 1992 Plan responded that, properly read, the statute simply means that any applicable age and service requirements must have been satisfied by February 1, 1993, and that in the case of a disability pensioner, this means only that he must have worked in signatory employment before that date. The court of appeals ruled that, although "the statutory language is reasonably susceptible to either of these two interpretations . . . [t]he historical background leading to the enactment of the Coal Act makes clear that Congress intended to provide coal industry retirees with . . . health benefits in the event of their retirement, whether that retirement resulted from a disability or was based solely on their satisfaction of age and service requirements . . . ." Pet. App. 13a. Accordingly, the court upheld the district court's summary judgment in favor of the 1992 Plan.

ARGUMENT

The court of appeals' decision is correct, and further review is not warranted. All three circuits that have addressed the issue presented here have reached the same result, and that result is plainly consistent with Congress' intent in enacting the Coal Act. It is inconceivable that the Congress that sought to protect and perpetuate retiree health benefits in the coal industry would have chosen to eliminate from the statute's coverage the very retirees likely to have a special need for the statute's protection – persons who have been totally and permanently

disabled in mine accidents. Contrary to petitioners' assertion, the statutory interpretation adopted by the court of appeals does not render any statutory language redundant or superfluous. It merely recognizes the unremarkable fact that the same statutory language need not apply in the same way to differently situated pensioners. By looking to the purpose and context of the statute in which the ambiguous statutory language appears, the court of appeals proceeded in a manner faithful to this Court's rulings. *See, e.g., Robinson v. Shell Oil Co.*, 519 U.S. 337, 345-47 (1997) (interpreting ambiguous statutory language by reference to broad context and primary purpose of remedial statute).

Petitioners' effort to raise in this Court a constitutional challenge to the application of the Coal Act to Pea Ridge and Oxide (as related persons to the pensioners' former employers) is similarly misguided. As both courts below ruled, petitioners waived any such argument by failing to present it in a timely fashion in the district court. Petitioners do not even bother to suggest any reason why this waiver ruling does not preclude review here. In any event, petitioners' challenge to the "control group" liability imposed by the Coal Act is unsupported by any authority and is without merit.

I. THE COURTS BELOW CORRECTLY INTERPRETED SECTIONS 9711 AND 9712 OF THE COAL ACT

Petitioners' basic contention is that, because Sections 9711 and 9712 of the Coal Act contain a date by which "age and service" requirements must be met, only retirees who are receiving pensions that are based on attainment of a certain age and a minimum number of years of service are eligible for benefits under those sections. Therefore, petitioners argue, disability pensioners, who are receiving pensions based on the

fact that they became totally and permanently disabled in mine accidents, rather than attainment of specific age and service requirements, are simply not covered by the Coal Act.[6] Petitioners contend that to read the statute otherwise renders the references to "age and service" redundant and superfluous. Petitioners misread the statute.

Contrary to petitioners' characterization, the phrases containing the words "age and service" do not, by their express terms, require that retired miners be receiving a certain kind of pension in order to meet the Coal Act's eligibility requirements. Indeed, the statutory provisions do not contain the term

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[6]Below, petitioners also argued that the eleven retirees at issue are not eligible for benefits under the Coal Act because they did not "retire" by September 30, 1994, as required by the statute. Under petitioners' theory, in order to be considered "retired," a miner must have actually filed a pension application. Because Sections 9711 and 9712 preclude coverage for individuals "who retired from the coal industry after September 30, 1994 . . . ," 26 U.S.C. §§ 9711(b)(1), 9712(b)(2), petitioners argued to the courts below that the eleven beneficiaries did not "retire" by September 30, 1994 because they had not yet filed their pension applications by that date. The court of appeals upheld the district court's rejection of this argument, holding that "[t]he plain meaning of the word 'retired,' . . . does not encompass only those individuals who receive, or have applied for, pension benefits." Pet. App. 14a (*citing The Random House College Dictionary* 1127 (rev. ed. 1980). Although petitioners mention the September 30, 1994 deadline in their Questions Presented and their Statement of the Case (Pet. 2), the petition contains no argument as to why the court of appeals' decision on this issue should be reviewed.

"pension" at all. Instead, each of the provisions simply sets the date by which certain requirements, *i.e.*, applicable age and service requirements, must be met.

Section 9711(b)(1) provides:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, *but has met the age and service requirements for eligibility to receive benefits under such plan as of such date,* shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries . . . .

26 U.S.C. § 9711(b)(1) (emphasis added). Rather than excluding coverage for disability pensioners, Section 9711 simply requires that the miner must have met age and service requirements, if any, for health benefits under the collectively bargained system by February 1, 1993.

Likewise, Section 9712(b)(2) describes eligible beneficiaries under the 1992 Plan as persons who:

> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, *based upon age and service earned as of February 1, 1993;* or
>
> (B) with respect to whom coverage is required to be provided under section 9711, but who does not receive

> such coverage from the applicable last signatory or any related person.

26 U.S.C. § 9712(b)(2). The language in Section 9712 of the Coal Act should be read in a similar fashion, to require that retirees meet applicable requirements that are "based on age and service" by February 1, 1993.

Both the pre-Coal Act individual employer plans and the UMWA 1950 and 1974 Benefit Plans provided benefits to retirees with all kinds of pensions, regardless of the age or service required for such pensions. Before the passage of the Coal Act, all pensioners under the 1974 Pension Plan (other than miners receiving deferred vested pensions with fewer than 20 years of service) received health coverage from their last signatory employer or the 1974 Benefit Plan if their last signatory employer was "no longer in business" within the meaning of the 1974 Benefit Plan document. The 1974 Pension Plan, in turn, provided a number of different kinds of pensions, with differing eligibility requirements. Among these were disability pensions. Eligibility for retiree health benefits therefore did not depend on attainment of a minimum age or length of service; a miner who met the requirements for a disability pension was entitled to a such a pension and, consequently, health care from either his employer or the UMWA Benefit Plans, regardless of his age or the length of his service. Accordingly, as the court of appeals held, the better reading of the phrases referring to "age and service" is as requirements that the miner have attained whatever age or service was necessary for his particular pension. Pet. App. 13a.

Petitioners argue that, under the interpretation upheld by the court of appeals, Sections 9711(b)(1) and 9712(b)(2) do not require the inclusion of the words "age and service" at all. Pet.

at 8-9. To the contrary, however, those provisions would have different meanings if the words age and service were stricken. Under the language as Congress wrote it, only age and service requirements must be met by February 1, 1993. Other requirements, such as the requirement that a disability pensioner be totally and permanently disabled in a mine accident in order to receive a disability pension, do not have to be met by that date. If the language highlighted by petitioners were removed, however, *all* eligibility requirements would have to have been met by February 1, 1993. Thus, the interpretation adopted by the Fourth Circuit, and by the Third Circuit in *Pennsylvania Mines* and the D.C. Circuit in *Penn Allegh,* does not render any language superfluous or redundant.

The distinction drawn by petitioners between "age and service" pensioners and disability pensioners would effectively rewrite the eligibility provisions of the pre-Coal Act IEPs and the 1974 Benefit Plan. As is evident from the plain language of the Coal Act, Congress simply did not intend, and the Coal Act did not accomplish, such a drastic change. Indeed, the purpose of the statute was to *preserve* these benefits. As Congress explained in the Coal Act's statement of policy, the Act was designed to remedy the problems in providing health care benefits "to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . ." 106 Stat. 3037; *see* 26 U.S.C. § 9701 (historical note). Petitioners' contention that Congress, without any expression whatsoever of an intent to do so, deliberately altered longstanding eligibility requirements so radically as to deny benefits to disabled pensioners is untenable. Had Congress intended such a drastic change, it surely would have said so directly. As the court of appeals held, the language concerning "age and service" is ambiguous, and the history and purpose of the Coal Act demonstrate that Congress did not intend to

exclude disability pensioners from coverage. Pet. App. 13a. *See also Penn Allegh,* 183 F.3d at 864; *Pennsylvania Mines,* 1999 U.S. App. LEXIS 30356, *17.

II. PETITIONERS' CONSTITUTIONAL ARGUMENT DOES NOT MERIT REVIEW

A. As The Courts Below Held, Petitioners' Constitutional Argument Was Waived

In pursuing their claim that the Coal Act is unconstitutional as applied to petitioners Pea Ridge and Oxide, petitioners fail to mention that the courts below held that the constitutional challenge was not timely raised, and was therefore waived. Petitioners do not suggest any reason why the waiver ruling was incorrect. Because the court of appeals did not address the merits of petitioners' constitutional arguments, this Court should decline to review them. *See Adickes v. Kress Co.*, 398 U.S. 144, 147 n.2 (1970) ("Where issues are neither raised before, nor considered by the Court of Appeals, this Court will not ordinarily consider them.").

B. The Fourth Circuit's Decision Does Not Conflict With Eastern

Even if petitioners had properly preserved their constitutional challenge, it would not warrant review here. *Eastern*, on which petitioners rely, does not apply to the circumstances of this case. *Eastern* involved a coal operator's statutory obligations to the Combined Fund, not the 1992 Plan. The *Eastern* decision was limited to application of Section 9706 of the Coal Act, a provision not at issue here. *Eastern* addressed the constitutionality of only one portion of the Coal Act's three-tier system for the assignment of Combined Fund

beneficiaries to former employers and held that one subsection of the statute, Section 9706(a)(3), was unconstitutional as applied to Eastern Enterprises. By contrast, the 1992 Plan is an entirely new benefit plan created by the Coal Act, with an entirely different funding mechanism. *See* 26 U.S.C. § 9712(d)(3). Finally, *Eastern* did not address the provisions of the Coal Act pertaining to related persons. Indeed, no court has ever questioned the validity of those provisions.

Petitioners nevertheless argue that there are similarities between this case and *Eastern* that demonstrate that the Coal Act is unconstitutional as applied to Pea Ridge and Oxide. Essentially, petitioners contend that assessment of liability against Pea Ridge and Oxide is unconstitutional because those companies did not actually sign collective bargaining agreements with the UMWA or employ coal miners under such agreements. As related persons, the liability of Pea Ridge and Oxide is, by definition, based upon their inclusion in a controlled group of corporations that also includes signatories to the 1988 NBCWA. That is the point of controlled group liability; by making all members of a corporate family liable, regardless of whether each such company itself signed a collective bargaining agreement, Congress sought to ensure that Coal Act liability would not be avoided through corporate manipulations.[7] What petitioners are really seeking here is a

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[7]Controlled group liability has long been included in other statutory schemes. As shown by the number of cases upholding previous legislation containing similar provisions, Congress acted reasonably in extending liability to the related persons of signatory operators. *See Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 711 F.2d 1085 (1st Cir.), *cert. denied*, 464 U.S. 916 (1983); *Teamsters Pension Trust Fund of*

determination that this Court, in *Eastern*, eliminated related person liability under the Coal Act. Even a cursory review of the decision demonstrates that the Court did no such thing.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 17, 1999

Philadelphia v. Domenic Cristinzio, 994 F. Supp. 617 (E.D. Pa. 1998); *Central States, Southeast and Southwest Areas Pension Fund v. Skyland Leasing Co.*, 691 F. Supp. 6 (W.D. Mich. 1987), *aff'd* 892 F.2d 1043 (6th Cir. 1990); *Branch v. United States*, 69 F.3d 1571 (Fed. Cir. 1995).